

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW BOGDEN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Pittsburgh, Pa.

*Docket No. 97-2750; Submitted on the Record;
Issued June 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that he refused suitable work.

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits on the grounds that he refused suitable work.

Appellant filed a claim alleging that he injured his right knee and back in the performance of duty. The Office accepted appellant's claim for right knee strain on April 8, 1997. The employing establishment provided appellant with a limited-duty assignment which appellant accepted on January 9, 1996. However, the record indicates that appellant used sick leave from January 9 through March 4, 1996 as well as March 7 through March 8, 1996. By decision dated April 8, 1997, the Office denied appellant's claim for total disability finding that appellant was fit for light duty, that light duty was available and offered to him and that he elected to use sick leave rather than return to duty and "thus, refused suitable employment." Appellant requested reconsideration of the Office's April 8, 1997 decision on May 6, 1997. By decision dated July 31, 1997, the Office denied modification of its prior decision.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work. Section 8106(c) of the Federal Employees' Compensation Act² provides that a partially disabled employee who refuses or neglects to work after suitable

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² 5 U.S.C. § 8106(c)(2).

work is offered to, procured by, or secured for the employee is not entitled to compensation. Section 10.124(c) of the applicable regulations³ provides that an employee who refuses or neglects to work after suitable work has been offered or secure for the employee, has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation. To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.⁴

The Board notes that due process and elementary fairness require that the Office observe certain procedure before terminating a claimant's monetary benefits under section 8106(c)(2) of the Act. In order to insure regularity and impartiality in adjudicating a claim and secure similar treatment of similar cases the Office must not only inform each claimant of the provisions of the above statute, but also inform him or her that a specific position offered is suitable; the consequences of refusal of the position; and allow the claimant a reasonable period to accept or reject the position or submit evidence or reasons why the position is not suitable and cannot be accepted.⁵

In this case, the Office did not comply with any of the required procedures⁶ prior to terminating appellant's compensation benefits. Appellant was not informed that the offered position was suitable and was not informed of the penalty provision of section 8106. For these reasons, the Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits on the grounds that he refused suitable work.

³ 20 C.F.R. § 10.124(c).

⁴ *Arthur C. Reck*, 47 ECAB 339 (1995).

⁵ *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4(c) (December 1993).

The decisions of the Office of Workers' Compensation Programs dated July 31 and April 8, 1997 are hereby reversed.

Dated, Washington, D.C.

June 22, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member